



STATE OF NEW JERSEY

In the Matter of Management
Specialist (Special and C0256T),
Bergen County

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC Docket No. 2018-3273

Appointment Waiver

ISSUED: DECEMBER 21, 2018 (SLK)

Bergen County requests permission not to make an appointment from the February 4, 2017 certification for Management Specialist (Special and C0256T).

The record reveals that in March 2015, the appointing authority provisionally appointed Richard Daul and Fredrick Hayo, Jr., pending open competitive examination procedures, to the subject title. The C0256T examination resulted in an employment roster of five eligibles, which promulgated on August 20, 2015 and expired on August 19, 2018. On February 4, 2017, a certification was issued which contained the names of five eligibles from an outstanding special reemployment list for the title and four eligibles from the C0256T eligible list. Bergen County returned the certification indicating that it would not be making an appointment and that the provisionals were no longer serving in the title.

The Division of Appeals and Regulatory Affairs (DARA) advised Bergen County that it could request an appointment waiver in this matter. Moreover, it was advised that if an appointment waiver was granted, it could be assessed for the costs of the selection process in the amount of \$2,048 and that it could submit reasons why costs of the selection process should not be assessed. In response, Bergen County requested an appointment waiver and fee waiver for the subject certification. Bergen County explained that the eligible who was in the first position on the certification was demoted from the title of Management Specialist on December 31, 2015 due to a layoff. Thereafter, this eligible pursued litigation against it. Consequently, due to

such circumstances, Bergen County presents that it did not return the subject certification. Subsequently, Bergen County and this eligible reached a settlement where it was agreed that she was to be placed back in the title of Management Specialist. Accordingly, Bergen County indicates that the provisionals were removed from the subject title and it sought to cancel the subject certification. It is noted that the appointing authority took no action to obviate the need for this examination at the time of the announcement or prior to its administration. *See N.J.A.C. 4A:10-2.2(a)1.*

A review of agency records indicates that there are no other employees recorded as serving provisionally pending open competitive examination procedures in the subject title with Bergen County.

CONCLUSION

In accordance with *N.J.S.A. 11A:4-5*, once the examination process has been initiated due to the appointment of a provisional employee or due to an appointing authority's request to fill a vacancy, the appointing authority must make an appointment from the resulting eligible list if there are three or more interested and eligible candidates. The only exception to this mandate may be made for a valid reason such as fiscal constraints.

In the instant matter, the examination for the subject title was generated as the result of the provisional appointments of Richard Daul and Fredrick Hayo, Jr., to the subject title. However, after a complete certification was issued, the appointing authority indicated that Dual and Hayo were removed from the subject title. Consequently, since there are no provisionals serving in the title at issue, there is sufficient justification for an appointment waiver.

Although an appointment waiver is granted in this matter, both *N.J.S.A. 11A:4-5* and *N.J.A.C. 4A:10-2.2(a)2* state that if an appointing authority receives permission not to make an appointment, it can be ordered to reimburse for the costs of the selection process. While administering examinations and providing the names of eligible job candidates to the jurisdictions under the civil service system are two of the primary activities of this agency, these costly efforts are thwarted when appointing authorities fail to utilize the resulting eligible lists to make appointments and candidates have needlessly expended their time, efforts and money to take these examinations in hopes of being considered for a permanent appointment. In this regard, the removal of the provisionals is insufficient to support a waiver of the costs of the selection process. Thus, although a waiver is granted, it is appropriate that the appointing authority be assessed \$2,048 for the costs of the selection process.

ORDER

Therefore, it is ordered that a waiver of the appointment requirement be granted. Additionally, the Civil Service Commission orders that the appointing authority be assessed for the costs of the selection process in the amount of \$2,048 to be paid within 30 days of the issuance of this order.

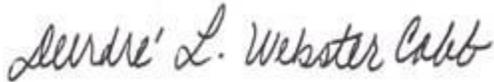
This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 19th DAY OF DECEMBER, 2018



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